

**OFFICE OF THE WASHOE COUNTY  
DISTRICT ATTORNEY**



**CRIMINAL DIVISION: CHARGING AND PLEA-  
BARGAINING STANDARDS**

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Appendix 1

## Summary:

The Washoe County District Attorney's Office's primary mission is pursuing justice and protecting the welfare of the community. For prosecutors in the Criminal Division of the Office this mission includes ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected. The principles highlighted in this document detail the decision-making process of Washoe County's prosecuting attorneys and summarizes the Office's criminal case handling philosophy and charging standard.

### *Charging Standard*

The standard to file criminal charges will be based primarily upon the existence of admissible, reliable evidence to prove that a crime was committed beyond a reasonable doubt. A realistic prospect of conviction is the guiding principle in a prosecutor's discretionary decision to file charges.

In all criminal cases, charges will normally be filed only after a thorough police investigation has yielded sufficient credible and admissible evidence to secure a conviction.

In cases involving repeat offenders, prosecutors shall seek a Habitual Criminal enhancement pursuant to NRS 207.010 or NRS 207.012 whenever a defendant has been previously convicted of the requisite number of felony offenses to qualify for the enhancement.

Additionally, prosecutors shall seek applicable sentencing enhancements pursuant to NRS Chapter 193 (193.161 - 193.1685) whenever there is sufficient proof that the enhancement applies to the crime.

### *Plea-Bargaining*

Prosecutors will recognize "Truth in Sentencing" is a fundamental value of the Office and will attempt to ensure that a sentence ordered by the court is fundamentally served.

Plea negotiations should be made with an eye toward what we aim for: protecting the public by delivering justice. A defendant will generally be expected to plead guilty to the most serious charge or most serious degree of charge filed that reflects the nature of his or her criminal conduct, or go to trial.

**I. Mission Statement**

*The Office of the Washoe County District Attorney is committed to achieving justice and protecting the welfare of our community.*

*We aggressively prosecute criminal cases, with a priority on violent crimes and repeat offenders, while preserving the rights and dignity of the victims of crime and their families.*

*We professionally represent the Board of County Commissioners and all other County Agencies in legal matters.*

*We protect children by ensuring the timely and sufficient payment of child support and the placement of those that are abused and neglected in a permanent, safe, and stable environment.*

*The work of this Office is for the people of Washoe County and it will be conducted with the highest standard of integrity and professionalism without prejudice, bias, or improper influence.*

Ultimately, this commitment is the overriding principle that governs our decision-making. For prosecutors in the Criminal Division of the Office this mission includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected.<sup>1</sup>

The following principles of prosecution have been designed to assist in structuring the decision-making process of Washoe

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<sup>1</sup> This significant responsibility of the public prosecutor was aptly described by Justice Sutherland in *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 639 (1935):

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

County's prosecuting attorneys. For the most part, they have been cast in general terms with a view to providing guidance rather than to mandating specific results. The intent is to assure regularity without regimentation, and to prevent unwarranted disparity without sacrificing necessary flexibility.

## **II. The Prosecutor's Role**

The legislative branch of government is responsible for writing law. Ultimately, the laws it writes provide the framework within which the police and prosecuting attorneys must act. The police identify and investigate criminal activity based upon the laws written by the legislative branch, and prosecuting attorneys apply those laws to criminal cases.

Criminal prosecutions are our community's principal means of pursuing justice and accountability for criminal conduct, as well as its primary interface with the adjudicative power. Only cases that are brought to courts by public prosecutors can be processed and adjudicated by juries and judges. The function of the prosecutor is primarily to represent the people of the State by prosecuting those who are alleged to have committed crimes. Prosecutors are responsible for representing not only the interests of our community at large, but also those of victims of crimes.

A criminal prosecution can result in a conviction only if sufficient evidence can be legally admitted in court to prove the accused's guilt beyond a reasonable doubt and overcome the presumption of innocence.<sup>2</sup> The District Attorney's Office is a prosecuting authority, not an investigatory law enforcement agency. A prosecuting attorney is therefore dependent upon law enforcement agencies to conduct the necessary factual investigation that serves as a basis upon which to make the charging decision and maintain a criminal prosecution. A prosecuting attorney can only accomplish the mission of achieving justice and accountability for criminal conduct if the presented investigation has resulted in sufficient admissible evidence to prove criminal charges beyond a reasonable doubt.

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<sup>2</sup> As defined in NRS 175.211(1).

### **III. Charging Standard**

The standard for whether to file criminal charges will normally be based primarily upon the existence of admissible, reliable evidence to prove that a crime was committed beyond a reasonable doubt.

Criminal charges will normally be filed if there exists sufficient admissible and credible evidence of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised. In short, a charge should only proceed if there is a realistic prospect of conviction and it is in the interest of justice.

The appropriate exercise of prosecutorial discretion is fundamental to the proper application of the charge screening standard. The community relies upon prosecutors to pursue charges that can be proven while protecting individuals from the serious repercussions of a criminal charge where there is no realistic prospect of conviction.

The prosecutor is not obligated to file all possible charges which the available evidence might support. The prosecuting attorney may properly exercise discretion to bring only those charges which adequately demonstrate the nature and seriousness of a defendant's criminal conduct, which are consistent with the evidence, and which are in the best interests of justice.

### **IV. Impermissible Considerations**

A prosecuting attorney shall not base the decision to initiate or decline prosecution or take other action against a person based upon the person's race, religion, gender and gender identity, ethnicity, national origin, sexual orientation, political association, disability, age, or socioeconomic status.

### **V. Screening Function**

Screening is the process by which a determination is made to initiate or pursue criminal charges. It is the ultimate responsibility of the prosecutor's office to determine which criminal charges, if any, should be prosecuted and against whom.

The decision to charge an individual with a crime is one of the most important decisions made by a prosecutor. It represents a

significant exercise of discretion that has serious consequences for those involved in a criminal case.<sup>3</sup>

A. Realistic prospect of conviction

The prosecutor exercising discretion to prosecute must consider the prospects of conviction. The decision as to the existence of a realistic prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. The prosecutor must find that a conviction is more than technically or theoretically available; the prospect of overcoming the presumption of innocence must be real.

The prosecutor should base the assessment only upon evidence that is likely to be admitted at trial by the trial court. The prosecutor must consider exculpatory as well as inculpatory evidence, and must examine any defenses that are plainly implicated or open to the defendant, or which have otherwise come to the attention of the investigating agency. Particularly when the strength or weakness of a case is not obvious, the prosecutor should look beyond the surface or face value of information and witness statements and consider the quality and reliability of the evidence. The prosecutor must keep in mind that Nevada's evidence laws generally do not allow a defendant's criminal history to be admitted at trial to prove guilt. This

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<sup>3</sup> Recognizing the gravity of the prosecutor's charging decision, the United States Supreme Court has stated that "requiring the Government to make charging decisions immediately upon assembling evidence sufficient to establish guilt would preclude the Government from giving full consideration to the desirability of not prosecuting in particular cases. The decision to file criminal charges, with the awesome consequences it entails, requires consideration of a wide range of factors in addition to the strength of the Government's case, in order to determine whether prosecution would be in the public interest. Prosecutors often need more information than proof of a suspect's guilt, therefore, before deciding whether to seek an indictment." *United States v. Lovasco*, 431 U.S. 783, 794, 97 S. Ct. 2044, 2051 (1977). See also *Wayte v. United States*, 470 U.S. 598, 607, 105 S. Ct. 1524, 1530 (1985) (Recognizing prosecutor's broad discretion to determine who to prosecute based upon consideration of factors such as "the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan."); ABA Standards for Criminal Justice: Prosecution Function, Standard 3-1.2 cmt. ("The prosecutor also has responsibility for deciding whether to bring charges... . Since the prosecutor bears a large share of the responsibility for determining which cases are taken into the courts, the character, quality, and efficiency of the whole system is shaped in great measure by the manner in which the prosecutor exercises his or her broad discretionary powers.").

means that a defendant's criminal record, no matter how substantial, generally does not constitute admissible evidence of guilt and does not assist in proving the defendant committed an alleged offense. A defendant's criminal history, while relevant for sentence enhancement and other aspects of case handling as described in these Standards, must therefore be excluded from consideration when assessing the prospects of conviction.

Additionally, only evidence known to be available at the time that the case is being assessed should be considered. It would be wrong to base an assessment of the strength of the case on information that investigators hope to uncover in the future, or which might emerge from the accused on the witness stand, depending upon how the trial unfolds.

It is recognized that case assessment is not a perfect science, and by its nature cannot be exercised with scientific precision. A realistic prospect of conviction does not demand certainty of conviction. This standard will include, for example, a relatively small number of "borderline" cases where the prosecution case is essentially sound, but there are flaws, the impact of which is difficult to assess with precision, and some cases that have strong and weak aspects so closely balanced that the outcome cannot be predicted with high confidence. The goal of this standard is not to eliminate from prosecution every case wherein a conviction might not occur. However, while certainty is not required, there must nonetheless be a realistic prospect of overcoming the presumption of innocence, as described above.

The decision to charge may be particularly difficult in cases in which the accused denies the allegations and the prosecution case consists of the uncorroborated evidence of a single witness. A prosecutor should not automatically reject such a case as not providing a realistic prospect of conviction. If, for instance, the single witness had a good opportunity to observe the events, was able to give a detailed account without unexplainable inconsistencies, had no history of dishonesty or motive to lie, and was not improperly influenced by third parties, it might be open to the prosecutor to conclude that the anticipated evidence provided a realistic prospect of conviction. On the other hand, if, based upon objective indicators within the case, reasonable doubt could not be

eliminated, then the prosecutor should properly conclude that there is no realistic prospect of conviction.

If a prosecutor is having difficulty assessing whether there is realistic prospect of conviction in a particular case, consultation with the prosecutor's supervising chief is recommended.

B. Proof beyond a reasonable doubt vs. probable cause to arrest

Probable cause and proof beyond a reasonable doubt are distinct standards that serve different purposes in the criminal justice system.

Probable cause is the minimum quantum of evidence required by the Fourth Amendment for the police to restrain a person's liberty by making an arrest. Its purpose is to ensure that the police do not exercise unfettered discretion when making seizures and holding arrestees in custody. Probable cause requires only a fair probability that the arrested person committed the crime, and can be based on hearsay and other evidence that would not be admissible at a trial. Probable cause does not demand the certainty required at trial, and falls far short of the amount of evidence required to convict an accused beyond a reasonable doubt.<sup>4</sup>

In contrast, "the Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.'"<sup>5</sup>

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<sup>4</sup> Probable cause is established by "only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13, 103 S. Ct. 2317, 2335 n.13 (1983). "[I]t does not demand any showing that such a belief be correct or more likely true than false. A 'practical, nontechnical' probability . . . is all that is required. *Texas v. Brown*, 460 U.S. 730, 742, 103 S. Ct. 1535, 1543 (1983) (quoting *Brinegar v. United States*, 338 U.S. 160, 176, 69 S. Ct. 1302, 1311 (1949)). The Fourth Amendment accepts risk that innocent people may be detained upon probable cause to believe they have committed a crime. See *Illinois v. Wardlow*, 528 U.S. 119, 126, 120 S. Ct. 673, 677 (2000).

<sup>5</sup> *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S. Ct. 2781, 2787 (1979) (quoting *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970)). *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S. Ct. 2781, 2787, 61 L. Ed. 2d 560 (1979) ("At the same time by impressing upon the factfinder the need to reach a subjective state of near certitude of the guilt of the accused, the

According to the United States Supreme Court, the standard of proof beyond a reasonable doubt "plays a vital role in the American scheme of criminal procedure," because it gives "concrete substance" to the presumption of innocence to ensure against unjust convictions, and to reduce the risk of factual error in a criminal proceeding.<sup>6</sup>

The existence of probable cause does not mean that a criminal charge can be proved beyond a reasonable doubt. The United States Supreme Court has recognized, for example, that "[g]ood police practice often requires postponing an arrest, even after probable cause has been established, in order to place the suspect under surveillance or otherwise develop further evidence necessary to prove guilt to a jury," and that society's "interest in ultimate conviction of the guilty requires the police sometimes to continue their investigation after establishing probable cause to arrest, even if doing so means they have to leave a suspect at large pending such investigation."<sup>7</sup> Accordingly, a prosecutor should not charge a case simply because the police have made a warrantless probable cause arrest. Consistent with the Prosecutor's Role, Charging Standard, and Screening Function set forth herein, a prosecutor must determine whether there is a realistic prospect of conviction based upon the existence of sufficient admissible evidence.

### C. Continuing duty to screen charges

The charge screening standard applies at all stages of a case, such as when the prosecuting attorney becomes aware of new information in preparation for and during the conduct of bail hearings, pre-trials, preliminary hearings, and trial preparation. While it is ideal to gather all information possible prior to charging, that is simply an unrealistic expectation. Particularly when a case comes to the prosecutor by virtue of a warrantless arrest, Nevada law affords relatively

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standard symbolizes the significance that our society attaches to the criminal sanction and thus to liberty itself").

<sup>6</sup> *In re Winship*, 397 U.S. 358, 363, 90 S. Ct. 1068, 1072 (1970).

<sup>7</sup> *United States v. Lovasco*, 431 U.S. 783, 791, 97 S. Ct. 2044, 2049 (1977) (quoting *United States v. Watson*, 423 U.S. 411, 431, 96 S. Ct. 820, 831, (1976) (Powell, J.)); *United States v. Watson*, 423 U.S. 411, 432 n.4, 96 S. Ct. 820, 832 n.4 (1976) (Powell, J.).

little time for the prosecutor to make a charging decision. Consequently, the prosecutor's initial charging decision will often be based, necessarily, upon police summaries of the evidence, rather than upon a detailed qualitative review and assessment of the evidence. It is recognized that even experienced prosecutors may at times have difficulty in assessing the strength of a case, particularly when only a summary of the evidence is available. There will thus be times when information not known at the time of charging will influence future actions in a case.

If at any stage, the prosecuting attorney determines that the evidentiary proof falls below the beyond a reasonable doubt standard such that there is no longer a reasonable prospect of conviction, the prosecutor should advise her or his supervising attorney, so that appropriate action may be taken.

#### D. Interests of justice

The criminal justice system operates on limited resources that are not sufficient to permit effective prosecution of every alleged offense.<sup>8</sup> Like all governmental agencies, a prosecutor does not have unlimited resources, and priorities must be set. A primary reason for allowing prosecutorial discretion in the charging process is that realistically all crimes cannot, nor should they, be prosecuted to the fullest extent possible.

Prosecutorial enforcement may be significantly affected by the Legislature's criminal justice policies. The Legislature is ultimately responsible for defining what constitutes a crime, formulating sentencing policy and penalties, and putting in place the procedures for responding to crime. The Legislature also enacts the laws that determine all aspects of pretrial policy, including the custody or release of defendants. Since the Legislature provides the legal framework within which the prosecuting attorney must act, prosecutorial resource allocation and enforcement priorities will necessarily be affected by the policies and offense classifications set by the Legislature.

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<sup>8</sup> See, e.g., *United States v. Smith*, 231 F.3d 800, 807 (11th Cir. 2000) (Recognizing that "[t]he reality resulting from limited law enforcement and judicial resources is that not every criminal violation of the United States Code can be prosecuted," and hence that "[p]rosecutors are given broad discretion in deciding against whom to focus limited prosecutorial resources").

Accordingly, the prosecutor must select for prosecution those cases or charges that warrant the allocation of available resources. In the interest of allocating its limited resources to achieve an effective prosecutorial enforcement program, the District Attorney's Office may establish prosecutorial priorities. These priorities are designed to focus limited prosecutorial resources and efforts on those matters that are most likely to further the mission of this Office.

The evidentiary strength of the case and likelihood that necessary evidence of guilt will be admitted by the trial court also bears upon whether a prosecution is in the interest of justice. A prosecuting attorney must bear in mind that she or he will have to introduce at trial admissible evidence sufficient to obtain and sustain a conviction, or else the government will suffer a dismissal, an acquittal, or a reversal on appeal. Additionally, prosecutors are not afforded a right of appeal if a criminal defendant is acquitted at trial. An acquittal thus forever ends the ability to pursue that case, even if the police later obtain additional evidence of the defendant's guilt. It is counterproductive and an inefficient use of limited prosecutorial and judicial resources to charge cases that an experienced prosecutor knows cannot overcome the presumption of innocence. For this reason, the prosecuting attorney should not bring charges that she or he cannot reasonably expect to prove beyond a reasonable doubt at trial by legally sufficient and admissible evidence, even if there is probable cause to arrest at the outset of the case.

Considerations that may bear upon the determination as to whether a prosecution is in the interest of justice are listed in Appendix 1.

If a prosecutor is having difficulty assessing whether a charge can be proven beyond a reasonable doubt at trial by legally sufficient and admissible evidence, consultation with the prosecutor's supervising chief is recommended.

E. Filing based on sufficient police investigation

Charges generally should be filed only after a thorough police investigation has yielded sufficient credible and admissible evidence to secure a conviction. Incomplete information impairs

accurate case assessment and can be a basis for inaccurate charging decisions.

If the filing of charges comes before the investigation has gathered sufficient evidence to secure a conviction and hold a perpetrator accountable, the premature arrest initiating the case will likely be the reason that the perpetrator, in the end, escapes accountability and is released from custody. The only way to truly protect the public and truly hold a perpetrator accountable is to ensure that charges are not instituted until sufficient evidence exists to support a conviction in a court of law.<sup>9</sup>

Additionally, the Nevada Supreme Court has recognized that it can be "a permissible defense tactic to attack the reliability, thoroughness, and good faith of a police investigation," and that *Brady v. Maryland* can require the disclosure of evidence that "provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation."<sup>10</sup> The thoroughness of the police investigation

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<sup>9</sup> The Courts have recognized that the interests of justice and accountability are endangered by premature arrests based upon probable cause. For instance, the United States Supreme Court has declared that "prosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect's guilt beyond a reasonable doubt. To impose such a duty 'would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself.'" *United States v. Lovasco*, 431 U.S. 783, 791, 97 S. Ct. 2044, 2049 (1977). "'Good police practice often requires postponing an arrest, even after probable cause has been established, in order to place the suspect under surveillance or otherwise develop further evidence necessary to prove guilt to a jury.'" *Lovasco*, 431 U.S. at 792 n.11, 97 S. Ct. at 2050 n.11. The Supreme Court also noted other reasons probable-cause arrests do not serve the criminal justice system:

From the perspective of law enforcement officials, a requirement of immediate prosecution upon probable cause is equally unacceptable because it could make obtaining proof of guilt beyond a reasonable doubt impossible by causing potentially fruitful sources of information to evaporate before they are fully exploited. And from the standpoint of the courts, such a requirement is unwise because it would cause scarce resources to be consumed on cases that prove to be insubstantial, or that involve only some of the responsible parties or some of the criminal acts. Thus, no one's interests would be well served by compelling prosecutors to initiate prosecutions as soon as they are legally entitled to do so. 431 U.S. at 791-92, 97 S. Ct. 2049-2050.

<sup>10</sup> *Mazzan v. Warden*, 116 Nev. 48, 67, 74 n.7, 993 P.2d 25, 37, 41 n.7 (2000).

is thus a factor bearing upon the evidentiary strength of a case to be considered as part of the Charging Standard and Screening Function set forth herein.<sup>11</sup>

Accordingly, charges generally should not be filed until a sufficient police investigation has yielded enough admissible evidence to obtain a conviction.

F. Filing based on warrantless arrest

All law enforcement agencies in Washoe County are aware that the cases they submit for prosecution must be supported by sufficient admissible evidence to prove any charges in court beyond a reasonable doubt. Law enforcement agencies in Washoe County are also aware that the courts generally require the prosecutor to address a defendant's bail/custody status within 24 to 48 hours and file charges within 72 hours of a warrantless arrest. Since law enforcement agencies generally have the option of either seeking an arrest warrant or making a warrantless arrest, the prosecuting attorney should generally expect that an investigating law enforcement agency electing to make a warrantless arrest will do so only when it has conducted a thorough investigation.

Accordingly, absent affirmative communication from the arresting law enforcement agency contemporaneous with or immediately after a warrantless arrest, the prosecuting attorney should presume that a warrantless arrest marks the end of the police investigation, and therefore that the sworn declaration supporting the arrest and any case reports submitted to the District Attorney's Office immediately after an arrest document the totality of the investigation and contain all relevant case information.

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<sup>11</sup> Considerations may include, for example, whether the police conducted the scientific tests, interviewed or attempted to interview apparently relevant witnesses, or pursued leads that a reasonable police investigation would have conducted, and whether such tests or further investigation reasonably may have led to significant evidence of the defendant's guilt or innocence.

G. Procedure when sufficient proof does not appear in Probable Cause declaration and supplemental materials submitted upon warrantless arrest

Where affirmative communication from the arresting law enforcement agency contemporaneous with or immediately after a warrantless arrest provides a reasonable belief that an investigation is ongoing, will be completed forthwith, and is likely to yield admissible evidence to support the charges beyond reasonable doubt, the prosecuting attorney may delay charging pending a complete and full investigation by law enforcement.

In circumstances where the prosecutor receives no affirmative communication regarding continuing or further investigation from the arresting law enforcement agency contemporaneous with or immediately after arrest, or where the prosecutor does not reasonably believe that a thorough investigation will be completed forthwith, the prosecutor should, instead of delaying charging, decline to charge the case in order to afford an opportunity for a timely, complete investigation to occur.

H. Filing based on expectation of further investigation

There will seldom be a valid reason to file charges before a thorough police investigation has secured sufficient admissible evidence to obtain a conviction.

In circumstances where (1) there is case-specific information that a suspect poses an imminent danger to the public, or (2) there is case-specific information indicating a significant risk that the suspect's flight will result in the suspect being beyond law enforcement's reach, the prosecuting attorney may institute charges before the police investigation is complete. The prosecuting attorney must have the assurance of the investigating agency and a good faith belief that the police will diligently undertake further investigation in order to complete the process of obtaining sufficient admissible evidence to prove the charges beyond a reasonable doubt.

## **VI. Notice of Declined Prosecution**

Whenever a prosecuting attorney declines prosecution in a particular case, the attorney will notify the investigating law enforcement agency and any victims of the disposition and the reasons for the decision.

### **A. Review of decision to decline prosecution**

A request to review a decision to decline prosecution in a particular case may be made to the prosecuting attorney's supervising Chief Deputy District Attorney. The request must be made by a supervisor of the police officer or detective who made the arrest or submitted the case for prosecution.

## **VII. Charging Habitual Criminal and Habitual Felon Enhancements**

Absent the approval of the prosecutor's team chief, a prosecutor shall seek a Habitual Criminal enhancement pursuant to NRS 207.010(1)(a) or 207.010(1)(b) whenever a defendant has been previously convicted of the requisite number of felony offenses to qualify for the enhancement.

Absent the approval of the prosecutor's team chief, a prosecutor shall seek a Habitual Felon enhancement pursuant to NRS 207.012 whenever a defendant has been previously convicted of the requisite number of felony offenses listed in NRS 207.012(2) to qualify for the enhancement.

A prosecutor shall not dismiss such a Habitual Criminal enhancement or Habitual Felon enhancement as part of a plea bargain without the approval of the prosecutor's team chief.

## **VIII. Charging Enhancements pursuant to NRS Chapter 193**

Absent the approval of the prosecutor's team chief, a prosecutor shall seek applicable sentencing enhancements pursuant to NRS Chapter 193 (193.161 - 193.1685) whenever there is sufficient proof, in accord with the charging standard set forth herein, that the enhancement applies to the crime.

A prosecutor shall not dismiss a sentencing enhancement as part of a plea bargain without the approval of the prosecutor's team chief.

## **IX. Disposition/Plea bargains**

### **A. Truth in Sentencing**

"Truth in Sentencing" is a fundamental value of this Office, which includes attempting to ensure that the sentence ordered by the court is fundamentally served. Prosecutors should stay advised of relevant sentencing programs such as specialty court programs and earned and unearned sentence reduction provisions (e.g., "good-time credit"). To accomplish truth in sentencing, it is vital to know how such sentencing programs and provisions impact a sentence.

### **B. Plea Bargaining Generally**

Ultimately, negotiations should be made with an eye toward what we aim for: protecting the public by delivering justice. Plea offers are not mandatory to make in criminal cases. They are to be provided to defendants pursuant to promoting efficient yet just outcomes. Prosecutors will retain the discretion to negotiate dismissals, non-prosecution, and sentencing recommendations in all cases subject to the general standards set forth herein.

A defendant will normally be expected to plead guilty to the most serious charge or most serious degree of charge filed that reflects the nature of his or her criminal conduct, or go to trial.

In certain circumstances, however, a plea agreement with a defendant in exchange for a plea of guilty to a charge or charges that are not the most serious or that may not fully describe the nature of his or her criminal conduct may be necessary and in the interest of justice. The considerations listed in Appendix 1 may have bearing upon this decision.

Absent the approval of the prosecutor's team chief, a prosecutor shall not offer or accept an offer of a plea bargain to a charge other than the most serious charge or most serious degree of charge.

## **X. Conclusion**

These Charging and Plea-Bargaining Standards balance multiple expectations placed upon this Office, namely, accountability for those who commit criminal offenses, recognition of victims'

rights, and meeting the highest burden of proof recognized under the law that criminal prosecutors are held to. These standards further advance consistency among the Office's prosecuting attorneys with respect to both charging and plea-bargaining decisions. Ultimately, the principles articulated herein advance the Washoe County District Attorney's Office's primary interests of pursuing justice and protecting the welfare of the community, while upholding the high ethical standards under which this Office operates.

## Appendix 1

In making the determination as to whether a prosecution is in the interest of justice or whether plea bargaining is appropriate, relevant considerations may include:

- The nature and seriousness of the offense, including whether the crime involves violence or bodily injury;
- The extent of harm caused by the offense;
- The strength of the evidence of guilt and likelihood of the necessary evidence of guilt being admitted by the trial judge;
- Evidentiary problems that were not apparent at filing;
- The thoroughness and completeness of the police investigation;
- The general and specific deterrent effect of prosecution;
- The defendant's culpability in connection with the offense;
- The defendant's history with respect to criminal activity;
- The interests of any victims;
- Consequences or undue hardship that would be caused to any victim;
- Relationship between the defendant and the victim;
- Expressed request of the victim, when it is not the result of pressure from the defendant;
- The probable sentence or other consequences if the defendant is convicted;
- Provisions for restitution and the realistic likelihood that full restitution will be made;
- The value to society of incapacitating the defendant in the event of a conviction;
- Likelihood of prosecution by another criminal justice authority;
- Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
- Aid to other prosecutorial goals through non-prosecution;

- Excessive costs of prosecution in relation to the seriousness of the offense;
- The correction of errors in the initial charging decision, or the discovery of facts that mitigate the seriousness of the accused's conduct
- Recommendation of the involved law enforcement personnel;
- The impact on public confidence in the Criminal Justice System;
- The Office's existing enforcement priorities, including any enforcement initiatives or operations aimed at accomplishing those priorities.<sup>12</sup>

This list is not exhaustive, but it does illustrate a number of considerations that may come into play in deciding whether a prosecution is in the interest of justice. The extent to which a given factor influences the ultimate determination is not expected to be the same in every case, but is expected to vary depending upon the circumstances of the particular case and the weight and countervailing force accorded to the other applicable considerations.

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<sup>12</sup> In *Lovasco*, the United States Supreme Court cited the following illustrative list of charging factors with approval: "(i) the prosecutor's reasonable doubt that the accused is in fact guilty; (ii) the extent of the harm caused by the offense; (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender; (iv) possible improper motives of a complainant; (v) reluctance of the victim to testify; (vi) cooperation of the accused in the apprehension or conviction of others; (vii) availability and likelihood of prosecution by another jurisdiction.'" 431 U.S. at 795 n.15, 97 S. Ct. at 2051 n.15.